

## DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to section 5 of the District of Columbia Free Clinic Assistance Program Act of 1986, D.C. Law 6-155, D.C. Code section 1-308.4 (1987) (the Act), and Mayor's Order 88-100, dated April 26, 1988, hereby gives notice of the adoption of chapter 20 of Title 26 DCMR, entitled "FREE CLINIC INSURANCE ASSISTANCE PROGRAM" on January 19, 1989. The Act was amended by the FREE CLINIC INSURANCE ASSISTANCE PROGRAM ACT OF 1986 Amendment Act of 1988 passed on second reading December 13, 1988, to extend the duration of the program. These rules will implement sections 3 and 4 of the Act, D.C. Code sections 1-308.2 and 1-308.3, which establish procedures for participation in the Free Clinic Insurance Assistance Program by free clinics that are unable to obtain medical liability insurance for themselves or volunteer service providers of the clinics. A Notice of Proposed Rulemaking was published in the D.C. Register on July 1, 1988, at 35 DCR 5125. Minor technical changes were made in response to comments received. These final rules will be effective upon publication of this notice in the D.C. Register.

## CHAPTER 20 FREE CLINIC INSURANCE ASSISTANCE PROGRAM

## 2001 COVERAGE

2001.1 This chapter implements sections 3 and 4 of the District of Columbia Free Clinic Insurance Assistance Program Act of 1986, D.C. Law 6-155, D.C. Code sections 1-308.2 and 1-308.3 (1987), the "Act," which establish a Free Clinic Insurance Assistance Program, the "Program," to assist free clinics that are unable to obtain medical liability insurance.

2001.2 This chapter applies to free clinics and volunteer service providers of free clinics that meet the requirements of section 2(2) (definition of "free clinic") or 2(3) (definition of "volunteer service provider") of the Act, D.C. Code section 1-308.1 (2) or (3).

2001.3 This chapter shall be administered by the Director of the Department of Consumer and Regulatory Affairs, the "Director."

## 2002 APPLICATION REQUIREMENTS

2002.1 A clinic seeking assistance from the Program shall file with the Director a completed application form provided by the Director, and shall submit the following:

- (a) Certification by the clinic that it is a "free clinic" and that persons who provide health care, rehabilitative, social or related administrative services at or on behalf of the clinic are "volunteer service providers," as defined by the Act;

- (b) The name and address of the insurance carrier, and policy number and its effective dates, of the last policy of medical liability insurance issued to the clinic;
- (c) Copies of any correspondence between an insurance carrier and the clinic indicating that the clinic's medical liability coverage has been or will be terminated, has been or will be cancelled, or will not be renewed;
- (d) The company name and address of each insurance carrier or a broker acting on behalf of the clinic, to whom the clinic has applied for medical liability insurance coverage since January 1, 1986, the results of the application, and copies of any correspondence or other documents related to these applications; and
- (e) Copies of the clinic's present policies or offers of insurance of any type.

2002.2 A free clinic shall be accepted for assistance from the Program if the Director determines either of the following:

- (a) The clinic is not able to obtain medical liability insurance because the insurance is not available; or
- (b) The clinic is not able to obtain medical liability insurance because the rate of available insurance is so high that it would not be economically feasible for the clinic to pay the rates.

2002.3 In order to make a determination of economic feasibility of available insurance, the Director may require the clinic to submit the following:

- (a) A complete financial statement for the clinic's fiscal year immediately preceding the date of the application for assistance from the Program;
- (b) A schedule of any fees charged by the clinic for any services;
- (c) The number of patients that the clinic served during the fiscal year immediately preceding the date of the application for assistance from the Program;
- (d) A catalog or other publication of the services that the clinic provide; and
- (e) Any other information that may assist the Director in determining the feasibility of insurance costs to the clinic.

2003 CERTIFICATION OF ACCEPTANCE

- 2003.1 The Director shall make a written determination of the eligibility of each clinic that applies for assistance from the Program, and shall provide a copy of this determination to the clinic.
- 2003.2 If a clinic is determined to be eligible for assistance, the Director shall notify the clinic to submit the compliance statements required by section 2004.
- 2003.3 If a clinic is determined to be ineligible for assistance, the Director shall provide the clinic with written reasons for the denial and notice of what, if any, actions may be taken by the clinic to become eligible.
- 2003.4 Upon submission of the compliance statements required by section 2004, the Director shall issue a certification to the clinic stating that the clinic has been accepted in the Program.
- 2003.5 Certification for assistance from the Program shall be conditioned on continued compliance by the clinic and its volunteer service providers with the Act and applicable regulations.
- 2003.6 Certification for assistance from the Program shall be for one (1) year or up to the expiration date of the Act, whichever occurs first.
- 2003.7 Those free clinics that have been previously certified pursuant to the Act shall have a period of forty-five (45) days from the date these regulations take effect within which to apply for recertification, and shall remain certified during that forty-five (45) day period. Upon the filing of a completed application form and required supporting documentation by the clinic, it shall remain certified pending the Director's action on the application; and if denied recertification, shall remain covered for a period of thirty (30) days thereafter.
- 2003.8 If the clinic fails to file an application for recertification within the aforesaid forty-five (45) day period, the coverage shall automatically terminate.
- 2003.9 Except for the circumstances specified in subsections 2003.7 and 2003.8, applications for recertification shall be filed sixty (60) days prior to the expiration date for the current certification.
- 2003.10 If a free clinic is denied recertification, coverage under the program shall terminate thirty (30) days from the date of the written notice of denial.

2004 STATEMENTS OF COMPLIANCE

- 2004.1 The executive director of a clinic shall execute on behalf of the clinic a notarized statement of compliance prepared by the Director and shall certify the following:
- (a) That the clinic understands the nature and scope of services to be performed by the clinic and its volunteer service providers in order to obtain and maintain certification for assistance under the Act;
  - (b) That the clinic is informed of and understands the provisions of the Act and applicable regulations;
  - (c) That the clinic will not permit volunteer service providers to perform services at or on behalf of the clinic until the provider has executed the notarized compliance statement required by this section; and
  - (d) That the clinic agrees to comply with all applicable laws and regulations and to ensure compliance by the clinic's volunteer service providers.
- 2004.2 Prior to performing any duties at or on behalf of a clinic, a volunteer service provider shall execute a notarized statement of compliance prepared by the Director and shall certify the following:
- (a) That he or she understands the nature and scope of services to be performed by the clinic and its volunteer service providers in order to obtain and maintain certification for assistance under the Act;
  - (b) That he or she is informed of, understands, and agrees to comply with the provisions of the Act and its implementing regulations;
  - (c) That he or she agrees to notify immediately the chief executive director of the clinic, or the officer's delegee, of any claim of injury or damages, or any incident which is likely to result in such a claim, arising out of the provider's service at or on behalf of the clinic; and
  - (d) That he or she agrees to cooperate in the investigation and resolution of any claim or incident arising out of his or her duties at or on behalf of the clinic.
- 2004.3 The clinic shall keep in a secure place the original of each statement of compliance completed by volunteer service providers.
- 2004.4 A clinic shall not discard an executed statement of compliance without written permission by the Director.

**2005 MAINTAINING CERTIFICATION**

- 2005.1 Certification for assistance from the Program shall not relieve a clinic from diligently seeking to obtain medical liability insurance.
- 2005.2 Not more than once in a calendar quarter, the Director may, upon ten (10) days written notice, require that a clinic participating in the Program report its efforts to obtain medical liability insurance. The Director may waive any reporting requirements under this subsection if the Director determines that the availability of medical liability insurance has not improved since the last reporting period.
- 2005.3 The Director may require a clinic to apply for medical liability insurance from one or more carriers that the Director has reason to believe will insure the clinic at reasonable rates.

**2006 CLAIMS PROCEDURES**

- 2006.1 A volunteer service provider shall immediately notify the executive director or his or her delegee of any claim of injury or damages, or any incident which is likely to result in such a claim, arising out of the provider's service at or on behalf of the clinic.
- 2006.2 The clinic shall notify the Corporation Counsel of the District of Columbia of any claim involving the clinic or a volunteer service provider of the clinic within four (4) business days after the clinic has knowledge of the claim or incident. This notification shall be in writing and shall include the originals of any documents received in relation to the claim, and the original statement of compliance signed by the affected provider as required by section 2004.2.
- 2006.3 The clinic shall send to the Director a copy of the written notice of a claim at the same time the notice is sent to the Corporation Counsel.
- 2006.4 The clinic and any volunteer service provider involved in the claim or incident shall cooperate in the investigation and resolution of any claim or incident arising out of the clinic's activities.
- 2006.5 If a free clinic meets the eligibility requirements of section 4 of the Act, the District government shall be liable to third parties for injuries caused by a certified clinic's or a volunteer service provider's negligence in connection with the provision of health-care, rehabilitative, social, or related administrative services, if the injury occurred during the period that the clinic and volunteer service provider were certified under the Act; even if the claim is filed after such certification has expired.